

Raj widow of Sawan Mall and another v. Devi Ditta Mall and another
(M. R. Sharma, J.)

(22) For the reasons mentioned above, there is no merit in this petition which is dismissed in limine with no order as to costs. The petitioner is allowed two months time to vacate the premises provided they pay or deposit in court arrears of rent, if any, and the rent for this period within fifteen days from today.

N.K.S.

Before M. R. Sharma, J.

RAJ WIDOW OF SAWAN MALL and another,—*Petitioners.*

versus

DEVI DITTA MALL and another,—*Respondents.*

Civil Revision No. 1724 of 1976

November 10, 1978.

Life Insurance Act (IV of 1938)—Section 39 (5) and (6)—Nominee of a deceased policy holder claiming insurance money—Suit for declaration and mandatory injunction filed by legal heirs against the nominee—Temporary injunction—Whether can be granted restraining the nominee from receiving insurance money.

Held, that a combined reading of sub-sections (5) and (6) of section 39 of the Life Insurance Act, 1938 shows that a nominee is in the nature of a trustee who receives the money due under a policy and keeps it for the benefit of the legal heirs of the deceased. The circumstance that he happens to be mentioned as a nominee by the person insured does not of itself clothe him with a title to the insurance money. Cases may arise in which the real beneficiaries under the insurance policy might apprehend that if the money falls into the hands of the nominee, they might not be able to realise it from him. In such circumstances a court of law which is primarily concerned with administering justice in accordance with the circumstances of a particular case shall be under an obligation to protect the rights of the real heirs of the deceased who alone are entitled to receive the insurance money. Section 39 of the Act merely provides for a procedure for the discharge of the insurance policy under certain contingencies so that if that procedure is strictly followed, the insurance company might not be burdened with additional liability. The existence of this provision does not debar a civil court, which is seized of a dispute between the real heirs of

the deceased and the nominee to pass an appropriate order in the nature of a temporary injunction to do justice in the case. (Para 2).

Petition under Section 115 C.P.C. for revision of the Order of Shri T.N. Gupta, Senior Sub-Judge with Enhanced Appellate Powers at Amritsar, dated 5th October, 1976 affirming that of Shri K. K. Garg, Sub-Judge 1st Class, Tarn Taran, dated 22nd September, 1975, directing respondent No. 1 to furnish security to the extent of Rs. 20,000 to the satisfaction of the court to the effect that if the suit of the plaintiff is decreed and the respondent No. 1 is called upon to pay the amount in accordance with the terms of the decree, then he will pay the amount. If respondent No. 1 fails to pay the amount in terms of the decree the surety will be liable to pay the amount on behalf of respondent No. 1. Respondent No. 1 will furnish the security within 15 days. If the security is furnished the injunction order dated 25th March, 1975 will stand vacated and directing the case to come up on 8th October, 1975 for issues.

Harinder Singh, Advocate with R. K. Garg, Advocate, for the Petitioner.

H. L. Sarin, Sr. Advocate with S. K. Gowari, Advocate, for respondent No. 1.

D. V. Sehgal, Advocate for respondent No. 2.

JUDGMENT

M. R. Sharma, J. (Oral).

(1) The petitioners are stated to be the widow and the son, respectively, of Sawan Mal, deceased. The deceased had taken a policy with the Life Insurance Corporation of India and he had nominated his real brother Devi Ditta Mal respondent to receive the amount in respect of the policy. Sawan Mal died as a result of an accident. The petitioners filed a suit for declaration that they being the legal heirs of the deceased were entitled to receive the amount due under the policy of insurance. They also claimed a mandatory injunction that the amount due under the policy should not be paid to Devi Ditta Mal, the nominee. The learned trial court when approached in that behalf declined to grant a temporary injunction against the nominee on the ground that if it were so done it would stultify the provisions of section 39 of the Life Insurance Act 1938 and further ordered that the amount should be received by the nominee who, in turn, should furnish security for

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restitution in case the suit filed by the petitioners succeeded. The petitioners filed an appeal against that order which was dismissed. Thereafter they filed the instant revision which came up before R. S. Narula, Chief Justice, on 2nd December, 1976, who passed the following order :—

“Notice. Respondent No. 2, the Life Insurance Corporation of India, may deposit the amount due under the insurance policy in question in the trial Court. On such deposit being made, the Life Insurance Corporation of India shall stand discharged of its liability under the policy. The amount so deposited shall not, however, be paid to either of the parties or to any one else till the decision of this revision petition.”

(2) Mr. Sarin, appearing on behalf of respondent No. 1, Devi Ditta Mall, who was mentioned as a nominee in the policy of insurance, has reiterated the same ground on which the learned courts below disallowed the prayer for injunction made by the petitioners. In support of his submission Mr. Sarin has placed reliance on a Single Bench decision reported as *Malli Dai & another v. Kanchan Prava Dei* (1), wherein it was held as under :—

“The other question for consideration is whether the prayer for interim injunction should be allowed. In my view the Courts below were right in refusing the prayer for injunction, which was against the nominee of the insured, and was to stultify the provisions of section 39 of the Act, inasmuch as under the nomination the amount was payable to the nominee. No injunction should ordinarily be granted by a Court where it defeats any statutory provision. The prayer for injunction was, therefore, misconceived and was rightly disallowed.”

The afore-mentioned observations do not lay down an absolute rule inasmuch as the learned judge has clearly indicated that an

injunction should ordinarily be not granted by a civil court where it defeats any statutory provision. A combined reading of sub-sections (5) and (6) of section 39 of the Insurance Act shows that a nominee is in the nature of a trustee who receives the money due under a policy and keeps it for the benefit of the legal heirs of deceased. In other words, the circumstances that he happens to be mentioned a nominee by the person insured does not of itself clothe him with a title to the insurance money. Cases may arise in which the real beneficiaries under the insurance policy might apprehend that if the money falls into the hands of the nominee, they might not be able to realise it from him. In such circumstances a court of law which is primarily concerned with administering justice in accordance with the circumstances of a particular case shall be under an obligation to protect the rights of the real heirs of the deceased who alone are entitled to receive the insurance money. As I look at section 39 of the Act, it merely provides for a procedure for the discharge of the insurance policy under certain contingencies so that if that procedure is strictly followed, the insurance company might not be burdened with additional liability. The existence of this provision does not really debar a civil court, which is seized of a dispute between the real heir of the deceased and the nominee, to pass an appropriate order in the nature of temporary injunction to do justice in the case. In the circumstances of the case, I am of the firm view that the *ad-interim* order passed by the learned Chief Justice above-referred adequately safeguards the interests of both the parties. I am saying so because the petitioners herein are stated to be the wife and a minor child of the deceased. If the nominee is allowed to take away the money even on furnishing security that might still create difficulties for the petitioners for realizing the amount due under the policy in the event of their success in the suit. Apparently, the balance of convenience is in favour of the petitioners.

(3) For the reasons mentioned above I allow this petition and order that the *ad-interim* order dated December 2, 1976, passed by the learned Chief Justice be made absolute. The learned trial court shall dispose of the suit as expeditiously as possible.